



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2137

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118021.

The City of Houston (the "city") received a request for various information relating to several named police officers. You state that you will release any documentation of any sustained complaints, grievances, or disciplinary actions taken by the Houston Police Department against these officers. However, you claim that the requested payroll and overtime records as well as documents reflecting moneys spent by the officers at certain business establishments are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

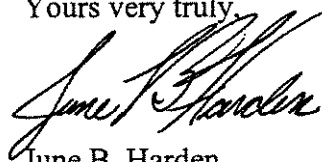
(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

You state that the requested information relates to several pending criminal investigations and prosecutions. After reviewing the submitted documents and your arguments, we conclude that the information relating to the moneys spent by the vice officers during their investigations of certain business establishments may be withheld under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

As for the payroll and overtime documents, we believe that this information only indirectly relates to law enforcement or prosecution. Thus, we do not believe that this information is excepted by section 552.108. Further, we do not believe that these records are protected by section 552.103.¹ To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). After reviewing the submitted arguments, we conclude that neither the city nor the Harris County District Attorney's Office has demonstrated how the requested payroll and overtime records relate to the pending criminal prosecutions. Consequently these records may not be withheld under section 552.103 and must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

¹Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Ref: ID# 118021

Enclosures: Submitted documents

cc: Mr. Paul Nugent
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(w/o enclosures)